# SUPREME COURT OF THE UNITED STATES.

No. 472.

THE UNITED STATES, PLAINTIFFS,

vs.

JOHN M. PUGH, IMPLEADED WITH JOHN SITTER.

CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

**FILED MAY 31, 1869.**

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1 UNITED STATES OF AMERICA, *Southern District of Ohio*:

At a circuit court of the United States begun and held in Cincinnati, in the southern district of Ohio, on the sixth day of April, one thousand eight hundred and sixty-nine:

Present, the Honorable N. H. Swayne and H. H. Leavitt, judges.

THE UNITED STATES
*vs.*
JOHN M. PUGH, IMPLEADED WITH JOHN SITTER.

*State of the pleadings.*

This is an indictment against the defendant, John M. Pugh, impleaded with one John Sitter, under the 13th section of the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," approved March 13th, 1813.

The indictment, in several counts, charges the defendant, John M. Pugh, and the said John Sitter, with unlawfully, knowingly, feloniously, and falsely making certain certificates of citizenship of the United States of America, commonly called certificates of naturalization; with unlawfully, knowingly, and feloniously and falsely making, forging, and counterfeiting, and causing to be falsely made, forged, and counterfeited, certain certificates of citizenship of the United States of America, commonly called certificates of naturalization; the said defendants

2 then and there well knowing that the aliens in said certificates mentioned had not in any respect complied with the laws of the United States relating to the naturalization of aliens, and had not made applica-

tion to the probate court of Franklin County, in the State of Ohio, or to any authorized persons of said court to be admitted as citizens of the United States; with unlawfully and knowingly disposing of a certain certificate of citizenship of the United States of America, commonly called a certificate of naturalization, to a person other than the person to whom it of right belonged; with unlawfully, knowingly, and fraudulently passing, uttering, and using as true, certain false certificates of citizenship of the United States of America, commonly called certificates of naturalization, well knowing the said certificates to be false.

It is also alleged in the said indictment that the said defendant, John M. Pugh, at the time of the committing of the said alleged offences, was judge of the probate court of Franklin County, in the State of Ohio; and the said several certificates of citizenship are therein set out, and are alleged to have been signed by the defendant, John M. Pugh, as judge and ex officio clerk of the said probate court, and sealed with the seal of said court, and are in the form following, to wit:

*United States of America.—Certificate of naturalization.*

STATE OF OHIO, *Franklin County, Probate Court:*

3 I, John M. Pugh, judge, and ex officio clerk of the probate court, within and for the county of Franklin, and State of Ohio, do certify that on the 12th day of October, in the year of our Lord one thousand eight hundred and sixty-eight, James Smith, a native of Canada, having in all respects complied with the laws of the United States relating to the naturalization of aliens, was duly admitted by said court to citizenship of the United States of America, and is therefore entitled to all the rights and privileges of a naturalized citizen.

In testimony whereof, I have hereunto set my hand and affixed the seal of the probate court, at Columbus, Ohio, this 2d day of October, A. D. 1868.

FRANKLIN COUNTY SEAL. PROBATE COURT

JOHN M. PUGH,
*Judge and ex officio Clerk of Franklin Probate Court.*

*Oath.*

"I do solemnly swear that I will support the Constitution of the United States, and that I do absolutely and entirely renounce and abjure all allegience and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to the government whereof I have hitherto been a citizen or subject."

To this indictment, the defendant, John M. Pugh, personally appeared, and filed a general demurrer, to which there was a joinder by the district attorney on behalf of the United States.

On the argument of this demurrer, at the present term, the following questions occurred:

1. Whether a judge of a probate court in the State of Ohio is authorized to admit aliens to become citizens of the United States and
4 to issue valid certificates of citizenship of the United States to aliens so admitted under the authority of the third section of the act of Congress, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," approved April 14th, 1802, or any other law of the United States.

2. Whether the defendant, John M. Pugh, is liable to an indictment

under the 13th section of the act of March 3d, 1813, aforesaid, where the acts charged are alleged to have been done by him in his official capacity as judge of the probate court of Franklin County, in the State of Ohio, exercising jurisdiction in the admission of aliens to become citizens of the United States, and making and issuing certificates of said naturalization to the same.

3. Whether the certificate or evidence of citizenship named and referred to in the 13th section of the said act of March 3d, 1813, includes all certified copies of acts of naturalization, purporting to have been made in pursuance of the laws of the United States for establishing a uniform rule of naturalization, or is limited to such as are intended to be used under the second section of the said act, for the purpose of furnishing evidence to authorize the employment of naturalized citizens of the United States on board any of the public or private vessels of the United States.

4. Whether the fraudulent admission of an alien to become a citizen of the United States, and issuing to him a certificate of naturalization, in the form set out in the indictment by the defendant, John M. Pugh, as judge of the probate court aforesaid, said certificate being signed by him in his official character, and sealed with the seal of his court, to a person known by him not to have complied with the laws on the subject of naturalization, and known by him not to be entitled to admission as a citizen of the United States, is an offence within the meaning of the 13th section of the said act of March 3d, 1813.

5. Whether the making by the defendant, John M. Pugh, corruptly and knowingly, of a false and fictitious record of the probate court, while acting as judge thereof, purporting to be a record of judicial proceedings in said court, in a case of naturalization of a certain-named person, when in fact no such proceeding had taken place, and no such person had made application in the same, and the issuing of a certified copy of said record in the form set out in the indictment to the person named in said record or to others, which certificate is signed by him in his official character as judge of said court, and sealed with the seal thereof, is an offence for which the said John M. Pugh may be legally indicted under the 13th section of the aforesaid act of March 3d, 1813.

6. Whether the making by the defendant, John M. Pugh, corruptly and knowingly of a certificate of naturalization, in the form set out in the indictment, purporting to be the certificate of the admission of a certain-named person, being an alien to citizenship of the United States, in the probate court of Franklin County, Ohio, when in fact no such proceedings took place in said court, and no record thereof was made, constitutes an offence within the meaning of the 13th section of the aforesaid act of March 3d, 1813, said certificate being signed by the said John M. Pugh, officially, in his character as judge and ex officio clerk of said court, and sealed by him with the seal thereof; or whether such certificate so authenticated is conclusive proof of the existence of such record and of the truth of the facts in the same set forth.

On which several questions the opinions of the judges were opposed.

Whereupon, on a motion of the said John M. Pugh, by his counsel, that the points on which the disagreement hath happened, may, during the term, be stated under the direction of the judges and certified under the seal of the court, to the Supreme Court to be finally decided.

It is ordered, that the foregoing state of the pleading and statement of the questions arising thereon, which is made under the direction of the judges, be certified according to the request of the said defendant,

John M. Pugh, by his counsel, and the law in that case made and provided.

7 THE UNITED STATES OF AMERICA,
*Southern District of Ohio, ss:*

I, John McLean, clerk of the circuit court of the United States within and for said district, hereby certify the foregoing transcript to be well and truly taken and copied from the journal of said court, as the same is kept in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 17th day of May, A. D. 1869, and in the 93d year of American independence.

Attest:

[SEAL.] JOHN McLEAN, *Clerk.*

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